IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 16 OF 1997

Shri Shivram Ladu Nitardekar,
resident of House No.89,
Davorlim, Salcete-Goa. ... Appellant

versus

1. Shri Alex Fernandes,
   resident of House No.82,
   Comba, Margao-Goa.

2. Smt. Vistalia Fernandes,
   resident of House No.82,
   Comba, Margao-Goa.

3. Shri Lusta Baptista,
   (since deceased) represented
   by his legal heirs:-

   (a) Mr. Neville Baptista(son);

   (b) Mrs. Tina Baptista;

   (c) Mrs. Molly Baptista(daughter);

   (d) Mr. Inas Fernandes, major;

   (e) Mr. Derek Baptista(son);

   (f) Mr. Gilson Baptista(son),
   All residents of Station Road,
   Malbhat, Margao-Goa.

4. Smt. Maria Lusta Baptista,
resident of Station Road,
Malbhat, MArgao-Goa. ... Respondents

Mr. M. S. Sonak, Advocate for the Appellant.

Mr. C. A. Coutinho, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 2ND SEPTEMBER, 2005.

ORAL JUDGMENT

This is plaintiff's second appeal arising from R.C.S. No. 253/79/C and was admitted by Order of this Court dated 17-4-1997 on a substantial question of law which reads as follows:-

> "Whether the tenancy extinguishes after collapse of tenement whatever the reasons may be for the collapse?'

2. There is no dispute that the plaintiff was the tenant of the respondent in respect of a tenement bearing House No. 83 situated at Comba, Margao admeasuring 23.45 sq. meters on payment of monthly rent of Rs.15/-.

3. The plaintiff alleging that on or about 24-9-1979 the defendants had damaged the said tenement and further alleging that the tenement was demolished by the defendants on 22-7-1979 filed the suit on 30-11-1979, interalia, for recovery of possession of the land where the tenement was situated and for restoration of the said tenement. The suit was resisted by the defendants stating that the tenement/suit structure was an old crumbling structure and although the defendants had requested the plaintiff to vacate the same in order to enable them to carry out the repairs the plaintiff had refused to vacate the same and had allowed by his own negligence and acquiescence the said tenement to deteriorate further and on account of the heavy rains the said structure became dangerous for occupation and in the month of July, 1979 part of the said structure collapsed. It is an admitted position that the plaintiff had vacated the tenement/structure prior to its demolition/collapse.

4. The learned Civil Judge, Junior Division on the basis of evidence produced before her, came to the conclusion that the tenement/structure had collapsed due to the rains and since the subject matter was not in existence and the plaintiff was not in occupation of the land on which it existed the plaintiff could not succeed in the suit. The first appellate Court concluded that the defendants had produced cogent and emphatic evidence to show that the suit tenement/hut/structure had collapsed due to very heavy rains and since the tenanted premises were not in existence the plaintiff's tenancy ended there and the plaintiff could not go either beyond or beneath it.

5. It is in the above background that the aforesaid substantial question of law came to be framed. The question in fact ought to have been whether the tenancy of a tenement extinguishes after the tenement collapses due to natural causes? An answer to the said question is not without difficulty since on behalf of the plaintiff as well as on behalf of the defendants two decisions of the Supreme Court have been relied upon and both holding divergent views.

6. On behalf of the plaintiff-appellant, the learned Counsel Mr. M. S. Sonak has placed reliance on the case of **T.Lakshmipathi and others** v. **P. Nithyananda Reddy and others**((2003) 5 SCC 150) while on behalf of the defendants/respondents, the learned Counsel Mr. C. A. Coutinho has placed reliance on the case of **Vannattankandy Ibrayi** v. **Kunhabdulla Hajee** (2001(1) CCC 55(SC). Mr. Sonak, has submitted that since there are divergent views expressed by the Hon'ble Supreme Court in the aforesaid two decisions, this Court can follow a view which appeals to it but he has also hastened to submit that the Supreme Court in the case of **T. Lakshmipathi and others** v. **P. Nithyananda Reddy and others**(supra) has approved the view held by this Court in the case of **Hind Rubber Industries(P) Ltd.** v. **Tayebhai Mohammedbhai Bagasarwalla** (AIR 1996 Bombay 389) and, therefore, this Court ought to follow not only the view of this Court in the said **Hind Rubber Industries(P) Ltd.** v. **Tayebhai Mohammedbai Bagasarwalla** (supra) as approved in **T. Lakshmipathi and others** v. **P. Nithyananda Reddy and others.**

7. On the other hand, Mr. C. A. Coutinho has submitted that in the case of **Hind Rubber Industries(P) Ltd.** v. **Tayebhai Mohammedbhai Bagasarwalla(**supra) as well as in **T. Lakshmipathi and others** v. **P. Nithyananda Reddy and others(**supra) the landlords had reconstructed the premises and they were available to be let out to the tenants and, therefore, the said cases are clearly distinguishable. Mr. Coutinho has further submitted that in the case at hand, the tenanted premises have ceased to exist due to natural causes and the plaintiff himself is out of possession of the land on which the said premises existed and, therefore, the plaintiff is not entitled to recover either the premises or the land on which they stood.

8. The case of **Vannattankandy Ibrayi** v. **Kunhabdulla Hajee**(supra) which was decided by two learned Judges of the Hon'ble Supreme Court was not brought to the notice of the other two Judges of the Supreme Court who decided the case of **T. Lakshmipathi and others** v. **P. Nithyananda Reddy and other**s(supra) and hence there has been rather divergence of views. In the case of **Vannattankandy Ibrayi** v. **Kunhabdulla Hajee**(supra) the Supreme Court clearly stated that the view

taken by this Court in **Hind Rubber Industries(P) Ltd.** v. **Tayebhai Mohammedbhai Bagasarwalla**(supra) did not lay down the correct view of law. In the case of **T. Lakshmipathi and others** v. **P. Nithyananda Reddy and others**(supra) the Supreme Court relied upon **Hind Rubber Industries(P) Ltd.** v. **Tayebhai Mohammedbhai Bagasarwalla**(supra) to come to the conclusion that in cases where tenancy is created in respect of a building standing on the land, it is the building and the land which are both components and the destruction of the building alone does not determine the tenancy when the land which was the site of the building continues to exist; more so when the building has been destroyed or demolished neither by the landlord nor by the act of nature but solely by the act of the tenant or the person claiming under him.

9. Reverting to the case of **Vannattankandy Ibrayi** v. **Kunhabdulla Hajee**(supra) the Supreme Court took note of several decisions including the decision of this Court in the case of **Hind Rubber Industries(P) Ltd.** v. **Tayebhai Mohammedbhai Bagasarwalla**(supra) as well as a decision of a Division Bench of Kerala High Court in **V. Kalpakam Amma** v.

Muthurama Iyer(AIR 1995 Kerala 99). The Supreme Court noted that the case of **Hind Rubber Industries(P) Ltd.** v. **Tayebhai Mohammedbhai Bagasarwalla**(supra) was a case where the plaintiff was the owner of the building and the said building which was let out to the defendant had caught fire and the building occupied by the defendant was destroyed and when the plaintiff brought a suit in the City CIvil Court, Bombay for mandatory injunction restraining the defendant from carrying out any work or enter upon the said land the defendant had raised an objection stating that the said suit filed by the plaintiff was not maintainable in the City Civil Court and after a preliminary issue was framed as regards the jurisdiction, the City Civil Court had held that it had jurisdiction to entertain and try the suit but a Civil Revision Petition having been filed by the defendant before this Court, this Court held that since upon the destruction of the property the tenancy was not extinguished and relationship of landlord and tenant continued to exist and, therefore, the City Civil Court had no jurisdiction to entertain and try the suit. The Apex Court then observed that the provisions of the State Rent Act clearly show that the State Rent Act is self contained Act and the rights and liabilities of landlord

and tenant are determined by the provisions contained therein and not by the provisions of the Transfer of Property Act or any other law. The rights of a landlord under the general law are substantially curtailed by the provisions of such Act as the Act is designed to confer benefit to tenants by providing accommodation and to protect them from unreasonable eviction. The Supreme Court noted that in the said case what they found was that the subject matter of tenancy was the shop room which was completely destroyed on account of accidental fire and it was not possible for the tenant to use the shop for which he took the shop on rent. After the shop was destroyed the tenant, without any consent or permission of the landlord, cannot put up a new construction on the site where the old structure stood. If it is held that despite the destruction of the shop, tenancy over the vacant land continued unless the tenant exercises his option under 108(B)(e) of the Act the situation that emerged was that the tenant would continue as a tenant of a non-existing building and liable to pay rent to a landlord when he is unable to use the shop. The tenancy of the shop, which was let out, was a super structure and what was protected by the State Rent Act is the occupation of the tenant in the super structure. If the argument of the Appellant's Counsel was accepted then it would mean that although the tenant on the destruction of

the shop cannot put up a new structure on the old site, still he would continue to squat on the vacant land. Under such situation, it is difficult to hold that the tenancy is not extinguished on the total destruction of the premises governed by the State Rent Act. Under the English Law in respect of a building and land the liability to pay the rent by the tenant to the landlord continues even on the destruction of the building whereas there is no liability of the tenant to pay rent to the landlord on the destruction of the premises governed by the State Rent Act. The Supreme Court noted that the situation would be different where a landlord himself pulls down a building governed by the State Rent Act.

10. In the case of **T. Lakshmipathi and others** v. **P. Nithyananda Reddy and others**(supra) the Hon'ble Supreme Court in para 22 of the Judgment stated that a lease of a house or a shop is a lease not only of the superstructure but also of its site. It would be different if not only the site but also the land beneath ceases to exist by an act of nature. In the present case, the appellants who are the successors of the tenancy right had demolished the superstructure but the land beneath continued to exist and the entire tenancy premises were not lost. Moreover, the appellants could not be permitted to take shelter behind his own act prejudicial to the interest of Respondent No.1 under whom Respondent Nos.2 and 3 were

holding as tenants and then inducted the appellants. The Hon'ble Supreme Court, therefore, held that they were of the opinion that in the event of the tenancy having been created in respect of a building standing on the land, it is the building and the land which are both components of the subject-matter of demise and the destruction of the building alone does not determine the tenancy when the land which was the site of the building continues to exist; more so when the building has been destroyed or demolished neither by the landlord nor by an act of nature but solely by the act of the tenant or the person claiming under him. Today, the question is not whether the Judgment of this Court in **Hind Rubber Industries(P) Ltd.** v. **Tayebhai Mohammedbhai Bagasarwalla** (supra) subsists or not. The question is which of the two pronouncements of the Hon'ble Supreme Court is to be applied to the facts of this case.

11. Tenancy is a relationship between a landlord and a tenant and that relationship is in respect of a subject-matter and in the case at hand, it was in respect of a hut/structure which the plaintiff fearing its collapse, abandoned and thereafter it collapsed on account of natural causes. The interest of the tenant in the land on which the premises existed was only incidental. In the case at hand, the plaintiff is not in possesion of the land on which the premises stood before they had collapsed after the plaintiff

abandoned the same fearing their collapse. On behalf of the plaintiff, plaintiff's learned Counsel has not been able to point out to any provision of law or any statutory provision under the GDD(Buildings)(LRE) Control Act, 1968 or for that matter any decided case which gives the plaintiff-as tenant a right to reconstruct the premises which have collapsed or compel the Respondents-landlords to reconstruct the same for the benefit of the tenant. If a right to reconstruct is acceded in favour of the tenant, then there is no reason why the tenant should thereafter pay any rent to the landlord at all. Admittedly also the Plaintiff-tenant has failed to pay the rent after the collapse of the premises. In such a situation, the view held by the Hon'ble Supreme Court in the case of **Vannattankandy Ibrayi** v. **Kunhabdulla Hajee**(supra) appears to be the correct view i.e. to say if the tenanted premises are destroyed due to natural causes or due to acts of negligence attributable to the tenant, the relationship between the plaintiff as tenant and the defendants as landlords would certainly come to an end and the tenant would not be entitled to insist that the landlord re-erects the said premises and gives to the tenant for his occupation. The Supreme Court has already stated that the situation would be different where a ladlord pulls down a building governed by the State Rent Act. In view of the above, the substantial question would stand answered accordingly in terms of the Judgment of the Apex Court in **Vannattankandy Ibrayi** v. **Kunhabdulla**

Hajee(supra). In other words, a tenancy of residential premises will extinguish if the tenanted premises collapse either to acts attributable to the tenant or on account of natural causes like the case at hand. The substantial question as framed/reframed therefore, is answered accordingly. Substantial Question No.2, does not arise.

12. In the above view of the matter, the Appeal fails and is hereby dismissed with costs in favour of the defendants.

N. A. BRITTO, J.

RD.